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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ABRUZZO DOCG INC. d/b/a
TARALLUCCI E VINO, et al.,

Plaintiffs,

v.

ACCEPTANCE INDEMNITY
INSURANCE COMPANY, et al.,

Defendants.

CIVIL ACTION NO. 1:20-cv-04160-MKB-JO

**AXIS INSURANCE COMPANY’S JOINDER IN
DEFENDANTS’ MOTION TO SEVER AND
OPPOSITION TO PLAINTIFFS’ MOTION TO REMAND**

Defendant, AXIS Insurance Company (“AXIS”), by its counsel, Kennedys CMK LLP, on behalf of itself hereby joins in the Motion to Sever and Opposition to Plaintiffs’ Motion to Remand, stating as follows:

1. On October 20, 2020, Defendants Chubb Custom Insurance Company and Indemnity Insurance Company of North America (collectively, the “Moving Insurers”) filed a Motion to Sever those claims of their respective insureds from the claims asserted by the other ninety-two (92) Plaintiffs, based on fraudulent and/or improper joinder. More specifically, the Moving Insurers seek severance because the claims asserted by their insureds do not arise out of the same transaction or occurrence, and because there is no common question of law or fact

common to all of the Plaintiffs' claims. At the very least, it is respectfully submitted that, pursuant to Rule 21, the Court to exercise its discretion to sever claims.

2. On October 20, 2020, Defendants Acceptance Indemnity Insurance Company filed an Opposition to Plaintiffs' Motion to Remand on the basis that Plaintiffs misjoined 62 separate claims of 95 Plaintiffs against 41 Defendants to frustrate Defendants' right of removal and the Court should maintain Defendants' right of removal based on diversity jurisdiction.

3. AXIS issued an individual insurance policy to one (1) separate and distinct insured and thus has a similar interest in the outcome of the Motion to Sever and Motion to Remand, and supports the arguments raised in support of severance and in opposition to remand.

4. As noted, AXIS issued an insurance policy to only one of the Plaintiffs: 101 West 75 Bar and Rest. Enterprises, Ltd. t/a Dive Bar 75 ("Dive 75"). See Plaintiffs' Amended Complaint at ¶¶ 284-291, and Exhibit 9 to Plaintiffs' Amended Complaint.

5. Dive 75 is alleged to own and operate the neighborhood bar located at 101 West 75th Street, New York, New York. Id. at ¶ 113.

6. AXIS issued Policy No. AXPB2019RBT01836 to Dive 75, for the policy period May 20, 2019 to May 20, 2020. Id. at ¶ 289, and Exhibit 9 to Plaintiffs' Amended Complaint.

7. AXIS is an Illinois corporation with its principal place of business in Georgia. Id. at ¶ 133. Accordingly, AXIS and Dive 75 are diverse and, based on Dive Bar's allegations, the amount in controversy exceeds \$75,000.

8. To the extent possible, the parties are required to coordinate and consolidate their submissions to the Court in connection with the Motion to Sever and Motion to Remand. As such, AXIS submits this Joinder to provide supplemental facts specific to AXIS as it pertains to the Motion to Sever and in further Opposition to Plaintiffs' Motion to Remand.

WHEREFORE, AXIS Insurance Company respectfully joins in the Motion to Sever and in Opposition to Plaintiffs' Motion to Remand, and requests that this Court grant the relief sought therein.

Dated: October 20, 2020

Respectfully submitted,

/s/ Daniel Pickett

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